Earlier this month, we provided posts here and here, outlining the United States Patent and Trademark Office’s ("USPTO") announcement of the availability of certain deadline waivers to help patent and trademark applicants and owners file papers during the COVID-19 outbreak. The original notice granted a 30-day extension on certain deadlines falling between March 27 and April 30, 2020 (inclusive).

On April 28, in new notices, the USPTO extended that time period further for both patents and trademarks. Papers filed on or before June 1, with deadlines falling between March 27 and May 31, 2020 (inclusive), will be considered timely, provided the papers include a statement that the delay in filing was due to the COVID-19 outbreak. The USPTO’s interpretation of applicants’ reasons on how the COVID-19 outbreak delayed their filing appears to be unchanged, as do the 12 categories of extensions in the original notice.

**Patents**

The new patent notice is very similar to the original notice. Certain categories of available relief that were broken out separately before, now are identified as two of 14 categories of available relief falling within the March 27 – May 31 time frame.
These are:

xiii. request for rehearing of a PTAB decision under 37 C.F.R. § 41.125(c) or 41.127(d); and.

xiv. petition to the Chief Judge under 37 C.F.R. § 41.3.

A 30-day extension for patent owner preliminary responses (‘‘POPR’’) in a trial proceeding, or any related responsive filings, where the due date fell between March 27 and April 30, 2020, still is available. As before, relief sought from a deadline coming after April 30 would not be automatic, and would have to come from the Patent Trial and Appeal Board (‘‘PTAB’’). Also as before, if the PTAB extends a POPR deadline, the PTAB also may extend statutory deadlines for institution of trial proceedings.\[i\]

The new USPTO notice incorporates guidance that the Office provided in March regarding petitions to revive. In applications and reexamination proceedings that were abandoned (or terminated or limited) on or before May 31, 2020, because of the COVID-19 outbreak, the USPTO will waive the revival petition fee.

**Trademarks**

The new trademark notice is virtually identical to the previous notice, except of course for the extension of the period for available relief. The new notice incorporates the Office’s March guidance regarding petitions to review for abandoned applications and canceled or expired registrations, extending the time frame for abandonments to May 31, 2020.

**What’s Next?**

Like many federal and state governmental agencies, the USPTO is taking incremental steps in response to the COVID-19 outbreak. It remains to be seen whether the Office will provide additional relief into the summer months.

\[i\] Ordinarily, the PTAB is required by law to determine within three months whether to institute a trial proceeding. 35 U.S.C. §§ 314(b) and 324(c).

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